

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CIVIL REVISION APPLICATION NO.4 OF 2015

Shri Ramaji Gupta and anr

..vs..

Smt. Pournima Kewate

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Shri G.P. Nephadia, counsel for the applicants.

CORAM : A.P. BHANGALE, J.

DATE : JUNE 17, 2015.

Heard.

This revision is preferred against order passed below Exh.17 in pending Regular Civil Suit No.144 of 2011 by the learned Judge, Small Causes Court, Nagpur. The learned trial Judge by order dated 25.6.2014 rejected the objection taken by the defendant tenant in the suit on the ground that landlord had filed earlier suit for eviction and it was finally decided. According to the learned counsel for the revision applicant earlier civil suit was on the same ground and, therefore, there was a bar of principle of *res judicata*. On that ground at interim stage, the suit of the landlord was sought to be defeated by agitating the principles of *res judicata*. The learned trial Judge refused to entertain the prayer

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for dismissal of the suit.

According to the learned counsel for the applicant, earlier the suit was for bona fide need of landlady on the ground that her son decided to shift from Nagpur to Mumbai to start the business. That suit was dismissed. The learned trial Judge found that the suit pending before the Small Causes Court, Nagpur was for additional ground of subletting also and the suit claimed was not, therefore, restricted to the alleged *bona fide* need.

The question as to whether the suit filed later is barred by the principles of *res judicata*, will have to be gone into on the basis of the evidence adduced by the parties at the final hearing of the suit not at *prima facie* ad interim stage. The learned trial Judge of the Small Causes Court found that issue of subletting was not raised in earlier suit and several points raised in the suit are required to be adjudicated by the Court. Therefore, prayer for dismissal of the suit at interim stage was negated.

Prima faice, I do find any impropriety or illegality in the order impugned since the landlady can plead for one or more grounds available to her in accordance with the provisions of the Maharashtra Rent Control Act merely because the

earlier the suit was dismissed and it was for *bona fide* need of landlady's son the landlady cannot be prevented for instituting another suit on such grounds which may be available to her. Each ground pleaded in the plaint needs to be addressed to the trial Court on merits on the basis of the evidence adduced by the parties and in accordance with law. Hence, I do not find any merit in the revision application in the absence of any exceptional ground so as to interfere with the interim order passed by the trial Court.

The revision application is rejected. Costs shall be costs in the cause.

JUDGE

!! BRW !!

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